PRIVY COUNCIL REPORTS

WONG SWEE CHIN @ BOTAK CHIN v. PUBLIC PROSECUTOR

[P.C. (Lord Wilberforce, Viscount Dilhorne, Lord Simon of Glaisdale, Lord Salmond and Lord Scarman) January 24, 1979]

[Privy Council Appeal No. 24 of 1978]

Criminal Law and Procedure — Plea of guilty — Charges under Internal Security Act — Sentenced to death — Application for extension of time to appeal.

This was an appeal against the decision of the Federal Court ([1977] 2 M.L.J. 194) where the appellant applied for an order that he be granted extension of time within which to file Notice of Appeal and was refused. The Privy Council allowed his appeal.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Jagjit Singh for the appellant.

Patrick William Medd Q.C. for the respondent.

No written judgment was delivered on this appeal.

Lord Wilberforce said at the hearing: "Their Lordships will ... report to His Majesty the Yang di-Pertuan Agong that the time for appeal should be extended; the convictions and sentence of the appellant should be set aside and the case remitted to the Federal Court for further consideration as to whether or not to order a new trial."

Order accordingly.

Solicitors: *Coward Chance; Stephenson Harwood.*

LUDHIANA TRANSPORT SYNDICATE & ANOR. v. CHEW SOO LAN & ANOR.

[P.C. (Viscount Dilhorne, Lord Russell of Killowen and Lord Keith of Kinkel) January 30 and April 4, 1979]

[Privy Council Appeal No. 32 of 1976]

Tort — Negligence — Appeal — Circumstantial evidence — Danger of speculation — Theory not tested by cross-examination — Findings of fact by trial judge — Appeal court should be wary of upsetting finding of trial court.

In this case there was an accident involving a motor car in which the husband of the first respondent was a passenger and a lorry driven by the second appellant and owned by the first appellants. The respondents as administratrix and co-administrator of the deceased's estate had brought an action for damages against the appellants claiming that the accident was caused by the second appellant, the driver of the motor lorry. The trial judge dismissed the action as he found that the accident was due entirely to the fault of the driver of the car. The driver of the car and the driver of the lorry both gave evidence at the trial and the trial judge accepted the evidence of the lorry driver and rejected that of the car driver. On appeal to the Federal Court the Federal Court held that the balance of probability was that the drivers of both vehicles were to blame and it was impossible to say in what proportion the blame should be allocated between them. In the circumstances they held that it would not be unreasonable to apportion the liability equally between the drivers of the two vehicles and therefore judgment should be given for the plaintiffs for half of the damages awarded — see [1976] 2 M.L.J. 205. The appellants appealed to the Privy Council.

Held, allowing the appeal: (1) an appeal court should be most wary of upsetting the finding of the trial judge who has seen and heard the witnesses upon the basis of theories of their own as to the general probabilities, which have not been fully tested at the trial;

(2) in this case the trial judge had rejected the evidence of the car driver. It was a strong step for an appeal court, which neither saw nor heard the witnesses, to hold that the trial judge was wrong to do so. Here, the Federal Court had not only done that, partly on their view as to the general probabilities and partly by attaching significance to pieces of evidence in themselves completely neutral, but they had reached a contrary finding as to the cause of accident which was not supported by any witness at the trial and which necessarily involved that the car driver could not have been telling the truth when he said he was driving as close as could be to his own side of the road.

HIGH COURT.

Foo Sam Ming for the plaintiffs.

P.P. Sangarananda for the defendants.

Ajaib Singh J.: The plaintiffs in this case brought this action in their capacity as administratrix and co-administrator of the deceased estate for the benefit of the widow and dependants of the deceased.

In their statement of claim the plaintiffs averred that on or about December 31, 1970 at about 12.50 p.m. the deceased was travelling as a passenger in motor car No. NB 5522 which was driven by one Chia Choo Hoo along Jalan Kuala Pilah-Jalan Seremban towards the direction of Seremban when at or near the 13th milestone motor lorry No. ND 1969 travelling along the opposite direction from Seremban towards Kuala Pilah and driven by the second defendant who was the servant or agent of the first defendant caused it to run into motor car No. NB 5522 in which the deceased was travelling and as a result of which he received fatal injuries and died on the same day. The plaintiffs alleged that the collision was caused solely by the negligence of the second defendant and they set out particulars of negligence in their statement of claim. The plaintiffs further relied on the doctrine of *res ipsa loquitur*. The plaintiffs also averred that as a result of the death of the deceased his estate and dependants suffered loss and damage. The deceased was a married man with a wife and five children. He was of 50 years of age at the time of his death and was a merchant earning about $1,000 per month out of which sum he paid $800 per month to the widow and his other dependants for their use, support and maintenance. The deceased was the sole supporter of the family and by his death the family lost support to the extent of $800 per month. In addition to general damages the plaintiffs also claimed a total of $4,965 as special damages in respect of funeral expenses, damage to the car and cost of obtaining the R.I.M.V. and police reports, sketch plan and photographs.

In their statement of defence the defendants denied that the accident was caused by the negligence of the second defendant and specifically denied all the particulars of negligence alleged against the second defendant in the statement of claim. They averred that the accident was caused solely or in the alternative contributed to by the negligence of the driver of motor car No. NB 5522 and they set out particulars of negligence against that driver. The defendants made no admission as to the alleged injuries, loss and damage.

At the commencement of the trial Mr. Foo Sam Ming for the plaintiffs asked for an amendment to